Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD O. RATZEL, JOSEPH J. HARDING,
MICHAEL J. LENCOSKI, JAMES A. SIMMONS
and DONALD J. BARNHOUSE

Appeal No. 2002-1023
Application No. 09/387,399

ON BRIEF

Before ABRAMS, McQUADE, and NASE, Administrative Patent Judges.

ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 7, 8, 10-12, 39-42 and 56. A review of the file indicates that claims 19, 20, 32 and 34-55 have been withdrawn from consideration as being drawn to a non-elected invention, and claims 1-6, 9, 13-18, 21-31 and 33 have been canceled.

We REVERSE.

BACKGROUND

The appellants' invention relates to a machine for making a cushioning product. An understanding of the invention can be derived from a reading of exemplary claim 7, which appears in the appendix to the Brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Wright et al. (Wright)	4,355,437	Oct. 26, 1982
Beierlorzer	5,656,008	Aug, 12, 1997
Baumuller (EPO Application)[1]	0679504A1	Nov. 02, 1995

Claims 7, 8, 11, 12, 39, 40, 42 and 56 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Baumuller in view of Beierlorzer.

Claims 10 and 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Baumuller in view of Beierlorzer and Wright.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the Answer (Paper No. 11), and to the Brief (Paper No. 10) and Reply Brief (Paper No.14) for the appellants arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the

[1]A translation of this foreign language reference is enclosed.

respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The appellants' invention is a cushioning conversion machine that produces protective packaging material for use in shipping cases, boxes and the like. The machine includes a forming device for converting a continuous web of stock material into a cushioning dunnage product by folding or rolling the material and a feeding device for advancing the stock material through the forming device. As manifested in the appellants' claim 7, for example, the machine comprises a housing through which the stock material passes along a path and upstream and downstream feeding components, wherein

> (1) the upstream feeding component advances the stock material toward the downstream component "at a rate faster than the stock material can pass from the downstream component to effect crumpling of the stock material therebetween;"
>
> (2) an adjustable speed control mechanism varies "the ratio of the feeding speeds of the upstream and downstream feeding components, whereby a characteristic of the
>
> (3) the adjustable speed control "comprises a control member outside said housing for enabling selective operator adjustment of the speed ratio, whereby the density of the strip of cushioning may be varied."

It is the examiner's position that all of the subject matter recited in independent claims 7, 39 and 56 would have been obvious[2] to one of ordinary skill in the art in view of the

[2]The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In establishing a prima facie case of obviousness, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See Ex parte Clapp, 227 USPQ 972,

(continued...)

combined teachings of Baumuller and Beierlorzer. In particular, and with reference initially to claim 7, the examiner asserts that Baumuller discloses or teaches all except for the adjustable speed control mechanism and the control member outside of the housing (Answer, pages 3 and 6). However, the examiner is of the view that the addition of the adjustable speed control would have been obvious in view of the teachings of Beierlorzer, and that the appellants have admitted in their specification that the location of a control member outside of the housing was known in the art at the time of their invention. The appellants provide arguments in response to both of these contentions.

Baumuller discloses a cushioning conversion machine in which crumpling of a web of a web of stock material is achieved by providing an upstream feeding component that feeds the web toward a downstream feeding component at a rate faster than the web can pass through the downstream feeding component, in the same fashion as in the appellants' machine. However, Baumuller does not disclose or teach the claimed adjustable speed control mechanism or the control member outside of the housing, as required by claim 7. The Baumuller teaching with regard to controlling the speed of the web material through the treatment zone is not to vary the ratios of the

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[2](...continued)
973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. See, for example, Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988).

speeds of the rollers, but to vary their diameters (translation, page 7). The reference furthermore does not suggest that there be a control member located outside the housing for enabling the operator to make adjustments. Thus, Baumuller fails to disclose or teach elements (2) and (3) of the claims as set forth above.

Beierlorzer is directed to a machine for making packing material by resiliently folding and crimping shredded strips of moistened paper material into an interlocking, bulk packaging material (Abstract). Bulking is accomplished by narrowing the profile of the discharge chute of the machine (column 14, line 67) and by placing an adjustable gate in the discharge chute (column 15, lines 21-23); it is not accomplished by varying the ratio of the speeds of upstream and downstream feeding components. The Beierlorzer machine also comprises a moistening system 20, and it is to this that the examiner refers. The moistening system causes the paper material to be wetted prior to directing it to a layering means 22 for longitudinally cutting and layering it and sending it through the discharge chute (column 9, line 57 et seq.). The moistening system includes a wetting roller 62 which wets the sheet material prior to bulking. With reference to Figure 3, it is explained that the rate of rotation of the wetting roller 62 can be varied by increasing or decreasing the speed of driving motor 60 such that “[t]he increase in speed of the motor 64 would result in faster rotation of the wetting roller 62 to transfer more water to the sheet paper 14" passing over roller 62 (column 10, line 31 et seq.). The speed of the wetting roller alters the amount of liquid applied to the web material moving over the wetting roller, but such adjustment does not alter the speed of

the web material itself. Thus, this reference would not have suggested to one of ordinary skill in the art that the speed of the web material be adjusted by altering the speed of the wetting roller, much less that an upstream web feeding component be adjustable with respect to a downstream web feeding component to vary the characteristics of the material.

Contrary to the position taken by the examiner, we therefore fail to perceive any teaching, suggestion or incentive in Beierlorzer which would have led one of ordinary skill in the art to provide the Baumuller machine with an adjustable speed control for varying the ratio of the speeds of the upstream and downstream feeding components to vary a characteristic of the strip of cushioning, as is required in claim 7.

Furthermore, we agree with the appellants that their statements in lines 3-5 of page 18 of the specification are not an admission that it was known at the time of their invention to locate an adjustable speed control member outside of the housing. From our perspective, one of ordinary skill in the art would have understood from this passage that the phrase “in a well known manner” refers to the manner in which the speed ratio can be varied, such as by means of the quick change gear sets, motor speed controls, and variable pitch pulley assemblies that have been disclosed in the specification, and not to the positioning of the speed control outside of the housing.

For the reasons set forth above, it is our conclusion that the combined teachings of Baumuller and Beierlorzer, taken with lines 3-5 of page 18 of the appellants’ specification, fail to establish a prima facie case of obviousness with regard to the

subject matter recited in claim 7. We therefore will not sustain the rejection of independent claim 7 or, it follows, of dependent claims 8, 11 and 12, which depend from claim 7 and stand rejected on the same basis.

We reach the same conclusion, for the same reasons, with regard to independent claim 39 and dependent claims 40 and 42, and independent claim 56, which contain the same limitations, albeit in different terms, as claim 7.

The examiner added Wright to the other references in the rejection of dependent claims 10 and 41 for its teaching of utilizing quick change gear sets for varying the speed of a control shaft. Be this as it may, Wright fails to overcome the shortcomings in the combination of the other references which we explained above. The rejection of claims 10 and 41 also is not sustained.

CONCLUSION

Neither rejection is sustained.

The decision of the examiner is reversed.

REVERSED

NEAL E. ABRAMS Administrative Patent Judge	)
JOHN P. McQUADE Administrative Patent Judge	) BOARD OF PATENT) APPEALS) AND) INTERFERENCES
JEFFREY V. NASE Administrative Patent Judge	)

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